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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

(Placer)

WELLS FARGO BANK, NATIONAL
ASSOCIATION,

Plaintiff and Respondent,

v.

ROBERT PHILLIPS, JR.,

Defendant and Appellant.

C080344

(Super. Ct. No. SCV0035327)

Defendant Robert Phillips, Jr., appeals in propria persona from the trial court's denial of his motion for relief from default. He argues the trial court erred in denying him relief because his failure to respond to the complaint resulted from plaintiff Wells Fargo Bank, National Association's (Wells Fargo) failure to properly serve him with process. We disagree.

BACKGROUND

On November 14, 2014, Wells Fargo brought a collection action against Phillips and his company, Robofil Corporation,¹ seeking to recover \$100,282.17.

On December 13, 2014, Phillips was served. The proof of service states the address Phillips was served at and describes Phillips as: “Age: 63; Weight: 170; Hair: Gray; Sex: Male; Height: 5’8”; Eyes: Brown; Race: Caucasian.”

In March 2015, Wells Fargo obtained a default judgment against Phillips. Three months after that, Phillips moved for relief from default, under Code of Civil Procedure section 473, subdivision (b).² He argued he was never served with the complaint, and the person described in the proof of service was not him: “I don’t have brown eyes, my eyes are blue. I am over 190 pounds and I am 67 not 63” In support, he attached a copy of his driver’s license, reflecting: Age: 66 (as of Dec. 2014); Weight: 165; Hair: Gray; Sex: Male; Height: 5’8”; Eyes: Blue; Race: Caucasian.³

The trial court denied Phillips’s motion for relief in a September 15, 2015 minute order, explaining: “That the process server’s estimated description of the person served does not precisely match defendant is not sufficient to rebut the presumption of proper service, and defendant offers no other information in support of his contention that he was not personally served with the summons and complaint as stated in the proof of service. Defendant otherwise fails to demonstrate mistake, inadvertence, surprise or

¹ Defendant Robofil Corporation is not a party to this appeal, nor does the record reflect that Robofil Corporation was represented below. (Cf. *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101 [“As a general rule, it is well established in California that a corporation cannot represent itself in a court of record either in propria persona or through an officer or agent who is not an attorney.”].)

² Undesignated statutory references are to the Code of Civil Procedure.

³ We note that both the proof of service as well as defendant’s driver’s license, which he presented as evidence, refer to defendant as “Robert Phillips, Jr.,” as do numerous documents in this record.

excusable neglect sufficient to justify relief pursuant to . . . section 473[, subdivision] (b).”

Phillips filed a notice of appeal, stating he was appealing from “[d]efault judgment,” which was entered on September 15, 2015.⁴

DISCUSSION

On appeal, Phillips contends the trial court erred in denying him relief from default. He argues the proof of service did not match his age, weight, height, and eye color. “In fact, the description in [Wells Fargo’s] proof of service matches a very average person, much younger, thinner and with brown eyes, a very different person.” He also argues the gate in front of his house made personal service impossible without his direct presence. We disagree.

We review a trial court’s decision to grant or deny relief under section 473 for abuse of discretion and, absent a clear showing of abuse, we will not disturb the exercise of discretion. (*Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318-1319.)

In support of his contention he was never served, Phillips cites *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383 (*Zara*). *Zara* held the trial court erred in denying a motion to quash for defective service. (*Id.* at p. 394.) Though the defendant had received actual notice, the proof of service indicated the rules governing service had not been followed. (*Id.* at p. 390.) The proof of service stated that service had been made on Zara, describing him as: “Asian, Male, 65 Years Old, Black Hair, Brown Eyes, 5 Feet 6 Inches, 160 Pounds.” (*Id.* at pp. 387-388.) In moving to quash, Zara provided a declaration that he is not Asian and does not have black hair. (*Id.* at p. 388.) The trial court denied the motion, but the appellate court reversed concluding

⁴ We construe Phillips’s notice of appeal as an appeal from the September 15, 2015 order denying his motion for relief from default.

either the proof of service was untruthful or the defendant had not been personally served by leaving a copy with someone authorized to accept service. (*Id.* at p. 390.) The court noted neither the trial court nor the plaintiff contradicted Zara's declaration when they saw him at the motion hearing. (*Ibid.*, fn. 2.) The court thus found the plaintiff had failed to substantially comply with the personal service statute. (*Id.* at p. 393.)

Here, however, the proof of service does not indicate a failure to substantially comply with the personal service statute, and Phillips does not overcome the presumption of proper service. (See Evid. Code, § 647; *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795 [filing a proof of service that complies with the applicable statutory requirements creates a rebuttable presumption of proper service].) The slight physical differences Phillips alleges are not the sort of material differences that support a conclusion of improper service.

Similarly, Phillips's assertion of improper service, based on his front gate, does not overcome the presumption of proper service—particularly where the proof of service offers a detailed and substantially correct physical description. (*Zara, supra*, 199 Cal.App.4th at p. 390 [the trial court was not required to accept self-serving evidence contradicting the process server's declaration].)

The trial court properly exercised its discretion in denying Phillips's motion for relief from default.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

HULL, Acting P. J.

MAURO, J.